IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Jail Appeal No. 148/2003

Nari Ram … Appellant.

Vs.

State .. Respondent.

Decided on 13-09-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(B.S.Verma, J.)

Dated: 13-09-2005.

In the High Court of Uttaranchal, at Nainital.

Criminal Jail Appeal No. 148/2003

Nari Ram S/o Moti Ram
R/o Chopara, Dhartoli,
P.S. Thal, District Pithoragarh ….. Appellant.

Vs.

State of Uttaranchal .. Respondent.

Sri Arvind Vashist, learned Amicus Curiae for the appellant.
Sri G.S. Sandhu, learned A.G.A. for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Dated: 13-09-2005

(P.C.):

Accused Nari Ram preferred this appeal from his conviction and sentence to imprisonment for life and fine of Rs. 5,000/- and in default to undergo further R.I. for one year, under Section 302 of the Indian Penal Code, per judgment dated 11.3.2003, passed by the then Sessions Judge, Pithoragarh in sessions trial No. 22/2002.

2- The accused is the husband of deceased Smt. Pushpa, who was found dead with injuries on the neck in her material home in the morning 29-5-2002. The facts of the case are that in the night between 28/29-5-2002 the accused and the deceased retired to their room of the house, situate in village Chopara (Dhartoli), within the circle of Police Out post, Thal of P.S. Didihat, District Pithoragarh. In the morning, Govind Ram (P.W.1), the faterh of the deceased was given information by Umesh Ram, the younger brother of the accused that the death of his daughter had occurred in her marital home. The information was received at about 8 A.M. on 29-5-2002. On receiving the information, Govind Ram alongwith his other family members went to the house of his son-in-law and there he found his daughter Smt. Pushpa lying dead in the room of the house. Govind Ram suspected that the murder of his daughter had been committed by his son-in-law, the accused some time in the preceding night. He then got a written report, Ext. Ka.1 scribed from Vinod Kumar and delivered it at the said Police Out Post the same day at 10.40 A.M. On its basis, check F.I.R., Ext. Ka.5 was drawn and relevant entry, Ext. Ka.6 was made vide G.D. report No. of 10.40

A.M. of the same date by the Clerk Constable. Therefore, a case under Section 302 I.P.C. was registered against the accused. Investigation was taken up by S.O. Ganesh Singh Samant, who after completing the formal formalities of the investigation left for the scene of the incident and on reaching there held inquest on the dead body to prepare the inquest report, Ext. Ka.7 and connected documents, including the challan report etc. Packed and sealed dead body of the deceased was then dispatched for post mortem which was conducted by Dr. Vijay Vilash at 10.30 A.M. on 30-5-2002. On receipt of the result of the post mortem examination and on completion of remaining formalities of the investigation, the investigating officer submitted charge sheet, Ext. Ka.14 against the accused on 13.6.2002.

3- The cognizance having been taken on the charge sheet, the accused was committed to court of Sessions at Pithoragarh and he was charged for an offence punishment under Section 302 IP.C. on 28-9-2002. The accused did not admit the accusations of the prosecution and claimed to be tried. He, however, gave out that he was not in his house at the time of the alleged occurrence and that his wife was maintaining illicit relations with some one else. He claimed that he was not mentally fit and although in the night of the incident he was sleeping with his wife he showed his ignorance about the cause of death. He admitted that he was arrested by the police from his house.

4- The prosecution, in order to bring home the accusations to the accused placed reliance on the evidence of five witnesses. They are informant Govind Ram (P.W.2), Smt. Parvati Devi (P.W.2), the mother of the deceased. Sri Ajay Kant Saini (P.W.3) Pargana Magistrate, Didihaat, District Pithoragarh, who recorded the confessional statement of the accused on 3.6.2002 under Section 164 of the Code of Criminal Procedure and proved the statement, Ext. Ka.2 by his evidence. S.I., Ganesh Singh Samant (P.W.4) is the Investigating Officer of the case and he gave evidence to prove the steps taken towards the investigation of the crime till the filing of the charge sheet against the accused on finding tha the offence was committed by the accused. Dr. Vijay Vilash (P.W.5), Autopsy

Surgeon proved autopsy report, ext. Ka.15 and as stated above the autopsy was held at 10.30 A.M. on 30.05.2002.

5- The medical officer found, on examination of the dead body discoloration (brownish) of face, neck and upper chest area. There was evidence of bleeding from vagina although no injury was seen on the private part.

6- The ante-mortem injuries detected were as follows:-

1- Two tiny abrasions present on front of neck situated 4 cm apart.

2- Multiple tiny abrasion present on back of neck.

3- Two lacerated wounds on back (vertical column). Upper wound was 3cm x 1cm and the lower wound was 0.2cm x 1cm. Distance between the two, 3.5 cm.

4- There was swelling present on the left eye and clot was also present. Whole of conjunctive was reddish.

On internal examination larynx was found congested and froth was present. Both the lungs were also lacerated. Right chamber of the heart was half filled with blood whereas left chamber was empty. In the opinion of the medical officer cause of death was asphyxia about thirty hours before the post mortem examination.

7- This all was the evidence of the prosecution. No evidence was adduced in defence by the accused.

8- Placing reliance on the evidence of the prosecution which proved the incriminating circumstances coupled with the confessional statement of the accused learned Sessions Judge accepted the claim of the prosecution that the accused committed the murder of his wife, the deceased, by strangulating her by neck in his house in the night between 28-29/-5-2002. The accused was, therefore, held guilty, convicted and sentenced as aforesaid.

9- We have heard the learned Amicus Curiae appearing on behalf of the accused and the learned A.G.A. and have carefully perused the evidence on record and have gone through the judgment under appeal with the help of learned counsel.

10- It need to be stated that the case of the prosecution squarely rests on the circumstantial evidence. The incriminating

circumstances as emerged from the evidence and pressed in to service by the prosecution were as under:-

1- The accused was suspecting that his wife had compromised her fidelity and on this account used to ill-treat her mentally and physically.

2- The accused and the deceased went to sleep together in the room of their marital house in the night between 28/29-5-2002 and that at that time the deceased was hale and hearty.

3- The dead body of the deceased with marks of strangulation on the neck, was recovered from the room where she went to sleep with her husband in the night of the incident.

4- The accused was arrested next day from his village Chopara, away from his house.

5- The accused confessed his guilt and admitted the existence of the incriminating circumstances in his statement under section 164 of the Code of Criminal Procedure recorded by the Pargana Magistrate on 3.6.2002.

11- In the backdrop of the evidence of the prosecution we have to see as to whether the incriminating circumstances enumerated above were satisfactorily established or proved to saddle the accused with the responsibility of committing the murder of his wife, as has been concluded by the trial court. At the outset it need to be stated that the accused himself has not disputed the fact that the death of the deceased was homicidal and that she met her death in the night of 28/29-5-2002 in her material home in village Chopara (Dhartoli) within the Circle of Police Out Post, Thal, P.S. Didihaat, District Pithoragarh. Even otherwise the medical evidence as referred above and reiterated by Dr. Vijay Vilash (P.W.5) prove beyond doubt that the deceased was subjected to manual strangulation which is borne out by not only the external characteristics of the body but also from the ante mortem injuries found on the person of the deceased. There was brownish discoloration of the fact, neck and upper chest area of the deceased which indicate that pressure was exerted on the chest, face and neck of the deceased at the time when she was strangulated by neck. The ante mortem injuries reproduced above also indicate

that abrasions were sustained on the neck and there were lacerated wounds on back of the vertical column which is a characteristic of throttling or strangulation by external force probably by hands. The reason also being that there was no ligature mark around the neck and the strangulation was made by hands which caused abrasions and lacerated wound on the back of vertical column of the deceased. The medical officer also gave categorical statement that in his opinion the neck of the deceased was strangulated by both the hands and this resulted in asphyxia and ultimate death of the deceased. The medical evidence also corroborated the time of the occurrence in the sense that at the time of the post mortem the duration of the death was mentioned approximately as thirty hours and there may be difference of about six to twelve hours on either side as stated thereto by the medical officer. The death was probably caused some time in the night between 28/29-5-2000. There can thus be no gain saying that the death of the deceased Smt. Pushpa was homicidal and whatsoever strangulated her by neck had intended to commit her murder at the time and place as alleged by the prosecution.

12- In regard to the first circumstance there is evidence of P.W.1 and P.W.2 the parents of the deceased, both of whom stated in one voice that accused were entertaining doubt and suspicion on the character of the deceased and on this account accused used to physically assault the deceased more often and also mentally tortured her by making it known that the deceased had compromised her fidelity. Learned Amicus Curiae appearing on behalf of the accused has drawn attention to the cross-examination of these witnesses and submitted that admittedly no report was ever lodged about the indecent conduct and behaviour of the accused and this aspect of the matter run counter to the normal conduct of the parents of the deceased. We see no merit in this argument because normally the parents of the daughter would like to see that the relations between the daughter and son-in-law may not turn bad to worse and by passage of time better sense may prevail and to son-in-law later or sooner start treating nicely their daughter. This is natural tendency which parents will have in such circumstances and even if no report was ever lodged about the bad behaviour

shown by the accused towards his wife the same can not be taken to belie the claim of the parents of the deceased. It has also come in the evidence of P.W.2 that the deceased used to complain to her that she does not like to remain with her husband for fear of harm and even death at the hands of the accused. However by persuasion of P.W.2 she used to be sent back to her marital home and to reside with the accuse. This act on the part of the mother of the deceased was also quite natural and normal and this can not be taken an instance to indicate that the relation between the accused and the deceased were cordial and normal and that the accused was not entertaining any suspicion in the fidelity of the deceased. The cross-examination of both these witnesses failed to bring anything material on record as may be taken to assail their testimony and in the totality of the circumstances of the case we are convinced that it was satisfactorily proved that the accused was having suspicion on the character of the deceased and on that account he used to illtreat her and gave her beating also on many occasions. This was also the cause of mental torture to the deceased. The trial court has also drawn similar inference on the basis of the appreciation of the evidence and therefore we find ourselves in agreement with the conclusion arrived at by the trial court in that regard.

13- The circumstances mentioned at serial No. 2 and 3 can be taken together because the evidence in regard to these circumstances is common. It was mentioned in the F.I.R., Ext. Ka.1 that the information Govind Ram was given information of the death of the deceased by Umesh Kumar, the brother of the accused. On this information informant went to the house of the accused and found the deceased lying dead in her room where she used to sleep with her husband the accused. Evidence of Investigating Officer S.I. Ganesh Singh Samant (P.W.4) and the inquest report, Ext, Ka,7 reveal that the inquest on the dead body was held in the living room of the accused, where the dead body of the deceased was found lying. In the site-plan, Ext. Ka.12 the room of the accused and from where the dead body of the deceased was recovered has been shown and the dead body was found lying at the place marked by encircled cross. There is nothing in the cross examination of P.W.1 and P.W.2

to indicate that the room from which the dead body was recovered did not belong to the accused and that he was not used to sleep there with his wife. In other words the evidence of these witnesses satisfactorily established that in the said room the accused and the deceased used to sleep and as usual they went to sleep there in the night of the incident. This aspect of the matter also lent credence to by the statement of the accused who stated under Section 313 of the Code of Criminal Procedure that in the night of the incident he went to sleep in his room along with his wife, the deceased. He has not alleged that the dead body was not recovered from his living room and in the totality of the circumstances of the case it is also established beyond doubt that the accused and the deceased went to sleep together in that room in the night between 28/29/5-2002 and in the morning the dead body of the deceased was found and recovered from this room. These incriminating circumstances are thus also stand established against the accused and the trial court also rightly held so by appreciation of the evidence on record.

14- The case was registered on 29-5-2002 and the Investigating Officer P.W.4 reached the village of the occurrence at 12 O'clock and thereafter arrested the accused from the road of Chopara Muani, that is, from the village of the occurrence itself. The defence has not disputed that the accused was so arrested by the Investigating Officer. The accused himself in his statement gave out that he was arrested on the day preceding the night of the incident from the village by the police. There is nothing to show that he was arrested from his house. It mean that the accused was absconding from his house and intended to show that the incident took place in his absence. He has however not succeeded in fleeing away from the village itself. This incriminating circumstance is a link in the chain of the circumstances against the accused.

15- The last circumstance related to the confession of the accused, Ext. Ka.2, which was proved by Sri Ajay Kant Saini, Pargana Magistrate, Didihaat who recorded it on 3.6.2002, under Section 164 of the Code of Criminal Procedure. The evidence of this witness prove that the preliminary precautions were duly taken by him in as much as the application by the investigation officer was presented to

this effect on 30-5-2002 and the order on the application for recording the statement was passed by the Judicial Magistrate on the same day i.e. on 30-5-2002. He also gave out that the accused was made to understand that he is free not to give the confessional statement and that in case he confesses the guilt the same may be used against him to prove implication in the commission of the murder of his wife. The witness also stated that at the time of recording of the statement on 3.6.2002 the officials of the court and the police personnel were kept away from near the accused so that the accused may feel free and may not be under any strain or duress to give the confessional statement. He then gave out that the statement given by the accused was written ad verbatim as stated to by the accused himself. Perusal of the statement, Ext. Ka.2 reveal that at the end of the statement of the accused thumb impression of the accused was obtained. However, thumb impression of the accused was not got appended at the foot of the certificate given by the Pargana Magistrate. In cross-examination this fact was highlighted with a view to raise some suspicion about the veracity of the statement but this omission can not be taken to have any adverse effect on the genuineness and veracity of the confessional statement. Perusal of the statement also indicate that in recording the statement compliance of the provisions of Section 164 and 281 of the Code of Criminal Procedure had been made and that the required certificate was also appended at the end of the statement.

16- Further, a plain reading of the entire confessional statement fully corroborate the case of the prosecution that in the night of the incident after taking night meal accused and his wife, the deceased, retired to sleep in their living room. The accused got up some time in the night and claimed to have found that his living room was locked from inside and that his wife had already breathed her last as a result of strangulation of neck. The accused, however, tried to show that he has had fits of epilepsy which was contrary to the defence claim as put forward through the cross-examination of P.W.2. It may be recall that P.W.2, the mother of the deceased was suggested that the deceased was patient of epilepsy and this suggestion was vehemently denied by the witness. Contrary to this

the accused tried to show that he used to have fits of epilepsy and to that extent it is evidence that the accused consciously made an attempt to create some sort of defence that in fit of epilepsy he might have strangulated his wife in the night of the occurrence. As the things stand he has utterly failed in his attempt and there being nothing on record either to indicate that the accused has had fits of epilepsy or the deceased was suffering from this disease possibility of the death of the deceased accidentally or on account of fits of epilepsy stand completely ruled out.

17- It is of significance that the accused also gave out that when he woke up and found his wife lying dead on the bed he unlocked the door of the room and came out and called his sister-in-law and others, all of whom then came inside the room and found that the death of the deceased was caused by strangulation of neck. The accused then gave out that in the morning at about 8-9 A.M. his father-in-law (P.W.1) and few others also reached his house and then his father-in-law told that he matter will be reported to the police. At the end of the statement the accused himself reiterated that the confessional statement was given by him out of his own free will and without any duress and coercion. The confessional statement thus speaks itself for its genuineness and veracity and the learned trial court rightly held it to be duly proved by the evidence of P.W.3 Sri Ajay Kant Saini, Pargana Magistrate and then to conclude that the confessional statement of the accused it itself and incriminating circumstance which is also a link and lent credence to the inference that the deceased was murdered by strangulating her neck in the night between 28/29-5-2002 in her marital home by none other than the accused himself.

18- Upon re-appreciation of the evidence as discussed above, we find that all the incriminating circumstances were established satisfactorily and beyond doubt against the accused and these circumstances make a complete chain which justify an irresistible inference that none other than the accused committed the murder of the deceased in the night of the incident.

19- In the aforesaid premise the appeal has no force and is liable to be dismissed.

20- The appeal is dismissed. The judgment dated 11.3.2003, convicting the accused-appellant Nari Ram under Section 32 I.P.C. and sentencing him to imprisonment for life and fine of Rs. 5000/- and in default of payment of fine to undergo R.I. for one year, is affirmed. He is in jail. He shall serve out the sentence awarded.

21- Let the record be sent back to the trial court.

(B.S.Verma,J.) **(Irshad Hussain, J.)**

ISB